



## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

**[Docket No. FWS–HQ–ES–2015–0169; 4500030113]**

### **Methodology for Prioritizing Status Reviews and Accompanying 12-Month Findings on Petitions for Listing Under the Endangered Species Act**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a final methodology for prioritizing status reviews and accompanying 12-month findings on petitions for listing species under the Endangered Species Act. This methodology is intended to allow us to address outstanding workload strategically as our resources allow and to provide transparency to our partners and other stakeholders as to how we establish priorities within our upcoming workload.

**DATES:** The Service plans to put this methodology in place immediately in order to prioritize upcoming status reviews and develop our National Listing Workplan.

**ADDRESSES:** You may review the reference materials and public input used in the creation of

this final methodology at <http://www.regulations.gov> at Docket No. FWS–HQ–ES–2015–0169.

Some of these materials are also available for public inspection at U.S. Fish and Wildlife Service, Division of Conservation and Classification, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803, during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Douglas Krofta, U.S. Fish and Wildlife Service, Division of Conservation and Classification, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; telephone 703/358–2171; facsimile 703/358–1735. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

Under the Endangered Species Act, as amended (Act; 16 U.S.C. 1531 *et seq.*), the public can petition the Service to list, delist, or reclassify a species as an endangered species or a threatened species. The Act sets forth specific timeframes in which to complete initial findings on petitions: the Service has, to the maximum extent practicable, 90 days from receiving a petition to make a finding on whether the petition presents substantial information indicating that the petitioned action may be warranted; and subsequently 12 months from receiving a petition for which the Service has made a positive initial finding to make a finding on whether the petitioned action is warranted, not warranted, or warranted but precluded. However, these

statutory deadlines have often proven not to be achievable given the workload in the listing program and the available resources.

As a result of petitions to list a large number of species under the Act received between 2007 and 2012, our workload requires us to complete more than 500 status reviews and accompanying 12-month findings on those petitions. At the same time, our resources to complete these findings are limited. Beginning in 2010, we took steps to streamline our listing program, and we continue to find efficiencies in our procedures for evaluating petitions and conducting listing actions. However, these efforts are not sufficient to keep up with the demands of our workload. This methodology is intended to allow us to address the outstanding workload of status reviews and accompanying 12-month findings strategically as our resources allow and to provide transparency to our partners and other stakeholders as to how we establish priorities within our workload into the future.

To balance and manage this existing and anticipated future status review and accompanying 12-month finding workload in the most efficient manner, we have developed this methodology to help us fulfill our mission and to use our resources in a consistent and predictable manner. We intend to achieve this goal by working on the highest-priority status reviews and accompanying 12-month petition findings (actions) first. The methodology consists of five prioritization categories. For each action, we will determine where (into which category) each action belongs, and we will use that information to establish the order in which we plan to complete status reviews and accompanying 12-month findings on petitions to list species under the Act. This prioritization of status reviews and accompanying 12-month petition findings will inform a multi-year National Listing Workplan for completing all types of actions in the listing program workload—including not only status reviews and accompanying 12-month findings, but

also status reviews initiated by the Service, proposed and final listing determinations, and proposed and final critical habitat designations. We will share the National Listing Workplan with other Federal agencies, State fish and wildlife agencies, Native American Tribes, and other stakeholders and the public at large through our website (<http://www.fws.gov/angered/>) and periodically update it as circumstances warrant. This methodology for prioritizing status reviews and accompanying 12-month petition findings to list species does not apply to actions to uplist a species from a threatened species to an endangered species, to downlist a species from an endangered species to a threatened species, or to delist a species. Further, this methodology does not replace our 1983 Endangered and Threatened Species Listing and Recovery Priority Guidelines (September 21, 1983; 48 FR 43098), which apply to species that have already been determined to warrant a listing proposal; rather, it complements it and can be used in conjunction with it. As with the 1983 guidelines, this methodology must be viewed as a guide and should not be looked upon as an inflexible framework for determining resource allocations (see 48 FR 43098). It is not intended to be binding. The methodology identified in this document that is to be used in prioritizing actions incorporates numerous objectives—including acting on the species that are most in need of, and that would most benefit from, listing under the Act first, and increasing the efficiency of the listing program.

We plan to evaluate unresolved status reviews and accompanying 12-month findings for upcoming listing actions and prioritize them using the prioritization categories identified in this methodology to assign each action to one of five priority categories, or “bins,” as described below. In prioritizing status reviews and accompanying 12-month findings, we will consider information from the 90-day finding, any petitions, and any other information in our files. We recognize that we may not always have in our files the information necessary to assign an action

to the correct bin, so we plan to work also with State fish and wildlife agencies and Native American Tribes who have management responsibility for these species or relevant scientific data, as well as with any other appropriate conservation partners who have relevant scientific data, to obtain the information necessary to allow us to accurately categorize specific actions.

### *Summary of Changes from the Draft Notice*

Below is a summary of changes from the draft methodology as a result of public review and comment.

1. We added to the description of Bin 1 to clarify our intent to include species for which there is an urgent need for protection under the Act.
2. A clarification of “reasonable timeframe” was added to the description of Bin 3.
3. The word “Opportunities” in the title of Bin 4 was changed to “Efforts” to more closely align with language in our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE).
4. We changed “completed in time” to “reasonable timeframe” in the description of Bin 4, clarified the phrase, and added language clarifying our consideration of conservation efforts.
5. We have split the section of the draft methodology titled **Additional Considerations** into two sections for the final methodology—“Sub-Ranking Considerations” and “Exceptions to Priority Order.” We clarified that the sub-ranking considerations are only to be used to move actions for species within bins, not between bins. We also explained the circumstances in which the exceptions to priority order may be used.
6. We made several other minor edits to increase clarity and readability of the methodology.

## Priority Bins

Below we describe the categories we have identified for prioritizing status reviews and accompanying 12-month petition findings and the information that we will consider when placing specific actions into the appropriate priority bin. An action need not meet every facet of a particular bin in order to be placed in that bin. If an action meets the conditions for more than one bin, the Service will seek to prioritize that action by considering any case-specific information relevant to determining what prioritization would, overall, best advance the objectives of this methodology—including protecting the species that are most in need of, and that would benefit most from, listing under the Act first, and increasing the efficiency of the listing program. If an action meets the definition for Bin 1 (see descriptions of bins, below) and one or more of the other bins, we will place the action in Bin 1 to address the urgency and degree of imperilment associated with that bin.

The sub-ranking considerations that follow the descriptions of the bins will be used to determine the relative timing of actions within bins, not to move actions between bins. Additionally, we identify two exceptions to the binning methodology that may, in certain circumstances, result in actions being completed out of priority order.

### *(1) Highest Priority—Critically Imperiled*

Highest priority will be given to a species experiencing severe threat levels across a majority of its range, resulting in severe population-level impacts. Species that are critically imperiled, meaning they appear to be in danger of extinction now, and need immediate listing action in order to prevent extinction, will be given highest priority. Actions placed in this bin include actions for which we have strong information indicating an urgent need for protection of

species under the Act as well as emergency listings. In section 4(b)(7) of the Act, the Secretary is granted discretion to issue a regulation that takes effect immediately upon publication in the **Federal Register**. Such an emergency regulation is in effect for a period of 240 days, during which time the Service follows routine rulemaking procedures to list a species as an endangered or threatened species. Given this statutory background, information indicating imminence of threats is a key factor for placement in this bin.

(2) *Strong Data Already Available on Status*

Actions for which we currently have strong information concerning the species' status will receive next highest priority. We acknowledge that the Act requires that we base our decisions on the best available information at the time we make a determination, and we will continue to adhere to that requirement. Our experience implementing the Act has shown us that high-quality scientific information leads to stronger, more defensible decisions that have increased longevity. Therefore, we will generally place actions for which we have particularly strong scientific data supporting a clear decision on a species' status—either a decision that the species likely warrants listing or likely does not warrant listing—at a higher priority than actions placed in Bins 3, 4, and 5, discussed below.

(3) *New Science Underway to Inform Key Uncertainties*

As stated previously, higher-quality scientific information leads to better decision-making, which focuses our resources on providing the protections of the Act to species most in need. Scientific uncertainty regarding information that could affect a species' status is often encountered in listing decisions. With the new, emerging information, a more-informed decision

could be made (e.g., a species' status could be determined fairly readily through surveys or other research). For circumstances when that uncertainty can be resolved within a reasonable timeframe because emerging science (e.g., taxonomy, genetics, threats) is underway to answer key questions that may influence the listing determination, those actions will be prioritized for completion next after those with existing strong information bases. The new information should be made available to us within a timeframe that is reasonable, considering what information is already known about threats, status, and trends for the species and how pivotal the new study would be to inform our status determination.

This bin is appropriate when the emerging science or study is already underway, or a report is expected soon, or the data exist, but they need to be compiled and analyzed. Placing an action in this bin does not put off working on the listing action; it just prioritizes work on actions in Bins 1 and 2 for completion first. An action for which ongoing research is not expected to produce results in the near future would not be placed in this bin. We intend to move forward with decision-making after the research results become available.

#### *(4) Conservation Efforts in Development or Underway*

Where efforts to conserve species are organized, underway, and likely to address the threats to the species, we will consider these actions as our fourth highest priority. Conservation efforts should be at a scale that is relevant to the conservation of the species and likely to be able to influence the outcome of a listing determination. Placing an action in this bin allows the Service to focus its resources on other species whose status is unlikely to change, while conservation efforts for this species get underway, and obtain enrollment or commitments from landowners or other entities, as needed, so that those efforts can have an impact on the status of



the species in time to be considered in the status review. If conservation efforts, although laudable, would not be able to address the major threats to a species, the action would not be appropriate for placement in Bin 4. Consistent with our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE) (68 FR 15100; March 28, 2003), we consider conservation efforts to be specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species. In order for actions to be appropriately placed in this bin, conservation efforts should be in place now or within a reasonable timeframe, considering what information is already known about threats, status, and trends for the species and how pivotal the conservation efforts would be to inform our status determination. When conducting the status review and accompanying 12-month finding, we will consider conservation efforts not yet implemented or not yet shown to be effective according to PECE, as appropriate. Conservation efforts should aim to be either implemented or effective by the time of the listing determination or meet the PECE standard (i.e., demonstrate a high certainty of implementation and effectiveness). Placing an action in this bin does not put off working on the listing action; it just prioritizes work on actions in Bins 1, 2, and 3 for completion first.

(5) *Limited Data Currently Available*

Actions for a species where limited information is available regarding its threats or status will be given fifth highest priority. If we do not have much information about a species without conducting research or further analysis, the action would be suitably placed in this bin. Placing an action in this bin does not put off working on the listing action; it just prioritizes work on actions in Bins 1, 2, 3, and 4 for completion first.

According to the standard under the Act, we need to make listing decisions based on the best available scientific and commercial data. Because the best available data for species in this bin may be very limited even if the Service conducts further research, we will prioritize work on species for which we have more and better data already available.

### **Sub-Ranking Considerations**

The three considerations set forth below will only be used to determine the relative timing of species within their respective bins (i.e., as tie-breakers within a bin), and will not be used to move species between bins.

a. The level of complexity surrounding the status review and accompanying 12-month finding, such as the degree of controversy, biological complexity, or whether the status review and accompanying 12-month finding covers multiple species or spans multiple geographic regions of the Service.

b. The extent to which the protections of the Act would be able to improve conditions for that species and its habitat or to provide benefits to many other species. For example, a species primarily under threat due to sea-level rise from the effects of climate change is unlikely to have its condition much improved by the protections of the Act. By contrast, a species primarily under threat due to habitat destruction or fragmentation from a specific human activity would more directly benefit from the protections of the Act. Although this consideration may be used to determine the relative timing of making determinations for different species within a particular bin, the Service does not consider this information in making status determinations of whether or not species warrant listing.

c. Whether the current highest priorities are clustered in a geographic area, such that our scientific expertise at the field office level is fully occupied with their existing workload. We recognize that the geographic distribution of our scientific expertise will in some cases require us to balance workload across geographic areas.

### **Exceptions to Priority Order**

In some specific instances, we may complete work on actions outside of priority order (e.g., we may work on a Bin 3 action ahead of a Bin 2 action). Where appropriate, the following exceptions may be used in scheduling the timing of actions.

a. Where there are opportunities to maximize efficiency by batching multiple species for the purpose of status reviews, petition findings, or listing determinations. For example, actions could be batched by taxon, by species with like threats, by similar geographic location, or other similar circumstances. Batching may result in lower-priority actions that are tied to higher-priority actions being completed earlier than they would otherwise.

b. Where there are any special circumstances whereby an action should be bumped up (or down) in scheduling. One limitation that might result in divergence from priority order is when the current highest priorities are clustered in a geographic area, such that our scientific expertise at the field office level is fully occupied with their existing workload. We recognize that the geographic distribution of our scientific expertise will in some cases require us to balance workload across geographic areas.

### **Summary of Comments and Recommendations**

On January 15, 2016, we published a document in the **Federal Register** (81 FR 2229)

that requested written comments and information from the public on the draft methodology for prioritizing status reviews and accompanying 12-month findings on petitions for listing under the Act. The comment period was open for 30 days, ending February 16, 2016. Comments we received are grouped into general categories below specifically relating to the draft methodology.

#### *Comments Regarding National Listing Workplan*

Comment (1): We received many comments on the National Listing Workplan asking for details regarding the frequency of updates, methodology for development, public or stakeholder input, types of actions to be included, consistency with prior Service policies, and the practical implementation of such a plan.

Our Response: Comments on the National Listing Workplan are outside the scope of this methodology and the open public comment period. This methodology is one tool that will be used to develop and maintain the National Listing Workplan. Other factors that will be considered in development of the National Listing Workplan include annual available funding, staffing resources, non-discretionary requirements such as court orders and settlement-agreement requirements, and the listing priority numbers of existing candidate species. This final methodology does not set forth the particulars of implementation or periodic revision of the National Listing Workplan; those details will be made available when the workplan is shared publicly later this summer through posting on our website and public outreach.

#### *Comments Regarding Bin 1*

Comment (2): Several commenters requested clarifications or definitions of words or phrases in Bin 1, specifically the phrases “critically imperiled,” “severe threat,” “majority of its

range,” and “severe population-level impacts.” Commenters suggested adding the phrase “based on the best available science” to the definition of Bin 1. Another commenter suggested adding examples of how the Service would determine that a species is experiencing severe threat levels across a majority of its range, resulting in severe population-level impacts.

Our Response: We have provided more clarity regarding the meaning of “critically imperiled” in the description of Bin 1. We consider that phrase to mean that a species appears to be in danger of extinction now (the species is currently on the brink of extinction in the wild), such that immediate action to list the species under the Act is necessary to prevent extinction. See Service 2008 for additional discussion of how the Service views categories of endangered species. In section 4(b)(7) of the Act, the Secretary is granted discretion to issue a regulation that takes effect immediately upon publication in the **Federal Register**. This emergency regulation is in effect for a period of 240 days, during which time the Service follows routine rulemaking procedures to list a species as endangered or threatened. Given this statutory background, information indicating imminence of threats is a key factor for placement in this bin. We have not added the phrase “based on the best available science” to the definition of Bin 1, because the requirement to base decisions on the best available science applies to the status determination, not to the binning or prioritization process. While we readily acknowledge that, at the time of bin placement, there will not yet be a determination of status, we will consider information from our files, the 90-day finding, any petitions, and from our partners (see **Background** section, above) indicating that a particular species may be experiencing severe, rangewide, and imminent threats in order to place a species in Bin 1.

However, we decline to define the other phrases highlighted by the commenters because the particular facts of what constitutes a “severe threat,” what the “majority of its range”

represents, and what “severe population-level impacts” means are highly specific to the circumstances of individual species.

Comment (3): One commenter noted that Bin 1 appears to suppose strong data are available to define “critically imperiled” and “severe threats,” meaning there is significant overlap between Bins 1 and 2. The commenter stated that the final methodology needs to make clear the distinction between placing species in Bin 1 or Bin 2.

Our Response: We have added language to the final methodology to further distinguish between Bin 1 and Bin 2. Our intent is that an action will be categorized into only one bin based on the information available at the time of binning. Our intent is to prioritize for early action the species that meet the definition of Bin 1, regardless of whether they meet the definition of other bins.

#### *Comments Regarding Bin 2*

Comment (4): One commenter requested that the Service clarify that assessing the strength of data solely relates to the availability of information, and will not prejudice the evaluation of whether listing is warranted or not warranted, which is based on the best available scientific and commercial information.

Our Response: This methodology does not dispose of the Service’s obligation to use the best available scientific and commercial data when assessing whether listing a species under the Act is warranted or not warranted. The intent of Bin 2 is not to evaluate how much available information there is about a particular species, but rather how strongly the data point in a

direction relative to whether listing may or may not be warranted. In this final methodology, we clarify the description for Bin 2 as the following:

“...we will generally place an action for which we have particularly strong scientific data supporting a clear decision on status—either a decision that the species likely warrants listing or likely does not warrant listing—at a higher priority than species in Bins 3, 4, and 5...”

Combined with the intent of this methodology for prioritizing status reviews and accompanying 12-month petition findings, we view this language as clear.

Comment (5): Several commenters questioned why the Service would prioritize work on 12-month findings that have strong information indicating listing is likely not warranted ahead of those where listing is likely warranted. In this same theme, another commenter stated that species that are imperiled should be prioritized over those that are relatively secure.

Our Response: To the extent possible, the Service will equally prioritize actions for species for which we have strong information indicating listing is likely warranted or likely not warranted. Both of these outcomes take advantage of the high quality of the current body of scientific knowledge on the species. In the case where we have strong information for a species indicating that listing is likely warranted, we want to provide the protections of the Act in a timely fashion. In the cases where we have strong information for a species indicating that listing is likely not warranted, we want to provide that regulatory certainty to our conservation partners so that they can focus their conservation resources on species in need. Additionally, by placing species in Bin 2 for which we have strong information indicating listing is likely not warranted, we anticipate being able to quickly and efficiently reduce our overall workload.

Comment (6): One commenter stated that because Bin 2 suggests adequate information is available to make a decision, candidate species in this bin should be either listed or determined to not warrant listing.

Our Response: This prioritization methodology has been developed strictly to prioritize work for species awaiting status reviews and accompanying 12-month findings after completed 90-day findings indicated that the species may warrant listing. Candidate species have already had a 12-month finding completed and have been determined to warrant listing; therefore, they would not be subject to binning using this methodology. Candidate species receive a listing priority number (LPN), which is a prioritization method for candidate species that have been found to warrant listing but are precluded by other actions of higher priority.

Comment (7): One commenter requested clarification of how the Service would categorize actions for species that potentially meet the criteria for more than one bin. In particular, the commenter questioned how the Service would prioritize between an action for a species with strong data available (Bin 2) and an action for a species with significant conservation efforts underway (Bin 4).

Our Response: This final prioritization methodology is designed to place an action into only one bin. In general, if an action meets the conditions for more than one bin, the Service will prioritize that action by considering any case-specific information relevant to determining what prioritization would, overall, best advance the objectives of this methodology—including protecting first the species that are most in need of, and that would benefit most from, listing under the Act, and increasing the efficiency of the listing program. If an action meets the



definition for Bin 1 and one or more of the other bins, we will place the action in Bin 1 to address the urgency and degree of imperilment associated with species in that bin. The Service will evaluate on a case-by-case basis other instances in which an action meets the criteria for more than one bin. In the particular instance highlighted by the commenter, where there is strong data indicating that listing a particular species is likely warranted and conservation measures likely to address the threats to the species are underway, the Service could choose to add the species to Bin 4. In this example, placement in Bin 4 would allow the Service to concentrate its resources on status reviews and accompanying 12-month findings for higher-priority species for which the conservation status is unlikely to change in the immediate future. Meanwhile, the conservation efforts for the species at issue might ameliorate threats such that listing would not be warranted by the time the Service completed higher-priority actions. This approach would also appropriately prioritize for earlier action species for which no conservation efforts are underway.

### *Comments Regarding Bin 3*

Comment (8): One commenter requested additional clarity regarding the types of data, uncertainties, or ongoing studies that are needed to appropriately place an action in Bin 3. The commenter suggested that actions only be placed in Bin 3 if the uncertainty relates to whether the species is imperiled or not and the new information may shift the outcome of the 12-month finding.

Our Response: Scientific uncertainty regarding information that could affect a species' status is often encountered in listing decisions. If the research underway would have no bearing on a status determination, we would not place the species in Bin 3. However, many types of

information, in addition to degree of imperilment, inform the outcome of a status determination. For example, ongoing investigations into questions regarding taxonomy and genetics inform whether the entity being evaluated qualifies as a listable entity or not. Therefore, a variety of types of research efforts underway may qualify an action for placement in Bin 3.

Comment (9): Several commenters asked for the Service to define “reasonable timeframe” and also noted that the Act does not allow for an exception to the 12-month timeframe to complete a status review and 12-month finding. One commenter encouraged the Service to make timely decisions.

Our Response: In our draft methodology (81 FR 2229; January 15, 2016), and in this final methodology, we readily acknowledge the requirements of the Act to make a status review and accompanying 12-month petition finding within 12 months of receiving a petition. However, it is not possible, given our budget limitations established by Congress and the immense backlog of 12-month findings, to meet our statutory obligations under the Act for 12-month findings. Regarding the request to define “reasonable timeframe,” we cannot specify a particular value of months or years. Rather, we have added language to the Bin 3 description to provide clarification that we intend “reasonable timeframe” to mean that the new information should be made available to us within a timeframe that is reasonable, considering what information is already known about threats, status, and trends for the species and how pivotal the new study would be to inform our status determination. This will allow for the necessary flexibility to assess case-specific facts and implement this prioritization methodology and thereby inform the National Listing Workplan. In this way, we envision being able to make decisions in a timely manner while providing predictability for our conservation partners.

#### *Comments Regarding Bin 4*

Comment (10): Several commenters requested the Service clarify that the types of conservation measures (permanent versus temporary; enforceable versus unenforceable) matter when considering binning species.

Our Response: Bin 4 would include species for which conservation efforts are organized, underway, and likely to address the threats to the species. These efforts could include a variety of different types of conservation efforts, and it is difficult to anticipate all the fact patterns that could arise. By using the phrase “likely to address the threats to the species,” we mean that they are at a scale that is relevant to the conservation of the species and that they are likely to be able to influence the outcome of a listing determination. If conservation efforts, although laudable, would not be able to address the major threats to a species, the species would not be appropriate for placement in Bin 4. Likewise, conservation efforts should aim to be implemented and effective by the time of the listing determination or to meet the PECE standard if either or both of those criteria have not been achieved (i.e., demonstrate a high certainty of implementation and/or effectiveness).

Comment (11): Several commenters suggested the consideration of conservation measures (Bin 4) should be a higher priority than “new science underway” (Bin 3), while one other commenter suggested Bin 4 be given the lowest priority to allow time for conservation measures to become effective and obviate the need to list species.

Our Response: The Service chooses to maintain the order of bins as described in the draft and this final methodology. We have determined that it is more logical to keep Bin 5 as the

lowest priority, rather than Bin 4. Placing the current Bin 5 ahead of the current Bin 4 would mean allocating more resources to data-deficient species rather than to species with higher-quality information. The order of Bin 3 also may have the effect of allowing time for needed scientific investigations to be completed and available for consideration in any 12-month finding. Lastly, we anticipate that Bin 5 will be used less in the future with more-consistent application of the 90-day finding standard; for example, if the proposed revised petition regulations are finalized as noticed to the public on April 16, 2016 (81 FR 23448), species with little information would be dismissed at the 90-day stage rather than considered for a full status review. The current order of the bins focuses the Service's resources first on those species whose status is unlikely to change, with the effect of allowing time for conservation measures to mature and become effective, potentially obviating the need to list species.

Comment (12): One commenter stated that Bin 4 mixes two separate considerations under the Act, listing and recovery. The commenter stated that a full determination of whether ongoing conservation efforts are sufficient to address threats can only be made if a recovery plan has been developed for a species.

Our Response: The Service has a long history of considering whether conservation efforts effectively ameliorate threats to species when making listing determinations under the Act. In particular, section 4(b)(1)(A) of the Act specifies that we consider conservation efforts being made by any State or political subdivision of a State when conducting a review of the status of a particular species. Our status assessments always consider conservation efforts that have been implemented and effective when analyzing the overall status of a species. We apply PECE when we wish to rely on conservation efforts in our status assessments that have not yet

been implemented or been shown to be effective. A recent example of the application of PECE is the not-warranted finding for the least chub (79 FR 51042; August 26, 2014). A recovery plan does not need to be in place before we can accurately assess whether conservation efforts are likely to affect a listing determination.

Comment (13): Several commenters questioned the meaning of the phrase, “completed in time for consideration in the status review” and asked for a definition of this phrase.

Our Response: We have changed the phrase “completed in time” to “reasonable timeframe” in this final methodology. We added language to the description of Bin 4 stating that conservation efforts should be in place now or within a reasonable timeframe, considering what information is already known about threats, status, and trends for the species and how pivotal the conservation efforts would be to inform our status determination.

Comment (14): A commenter questioned whether conservation efforts need be completed or participants only be enrolled. If the Service intends only the latter, the commenter recommends actions should be evaluated according to PECE.

Our Response: When we refer to conservation efforts, we consider those to be specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species. We have added language to the description of Bin 4 to clarify this point. Our intention is for this methodology to be an assessment tool to quickly and strategically prioritize our workload. Before we can rely on conservation efforts that have not been implemented or shown to be effective as a basis for not listing a species that would otherwise be warranted, we

first must determine that the efforts have a high certainty of effectiveness and implementation in accordance with PECE.

#### *Comments Regarding Bin 5*

Comment (15): One commenter suggested reevaluating species in Bin 5 on a regular basis to determine whether they can be moved to another bin.

Our Response: If we receive additional information on a species for which we formerly had little information, we can revisit the order in which we plan to address it. We may take into consideration such factors as: whether moving an action for a species into another bin would disrupt other actions in that bin; whether resources would be available to address the action; whether conservation partners would be able to take action on that particular species; or other relevant factors. However, because the National Listing Workplan is designed to provide predictability to our stakeholders on what actions we are taking and when, we want to avoid delaying already scheduled actions to the extent possible. Therefore, we might not be able to change the timeframe associated with that action unless we determined that it qualified for Bin 1 or we have the ability to take on additional work with our existing resources.

Comment (16): Many commenters disagreed with the concept of Bin 5 altogether and suggested species in this bin should not be subjected to status reviews if almost no data exist regarding their status. Other commenters were concerned that species in this bin would be “parked” here indefinitely. A few commenters stressed that the relevant inquiry for a 12-month finding is not whether there is a lack of data, but rather an assessment of the best available scientific and commercial data regarding a species. Commenters reminded the Service that there

is a significant distinction between not knowing enough about a species and a circumstance where the best available information does not indicate listing is warranted.

Our Response: Under the Act, once we make a positive 90-day finding, we are required to conduct a status review of the species and issue a 12-month finding. If the best available scientific and commercial information is extremely limited, and nothing in that information points to operative threats to the species or its habitat, the Service is likely to make a not-warranted 12-month finding (or, in the future, if the Service is faced with such a petition, there is a good chance it would find at the 90-day finding stage that the petition does not present substantial information). We also agree that the basis for a not-warranted finding must be the best available scientific and commercial information; the concept of not knowing enough about a species is not a basis for a not-warranted finding. Many of the species that are currently appropriate for placement in Bin 5 are species from one or more multi-species petitions we received between 2007 and 2012. Faced with fulfilling our obligation to make 90-day findings for hundreds of species in a short period of time, we made positive 90-day findings for some species with little more than general habitat or occurrence information because we were more concerned with false negatives (Type 2 errors) rather than false positives (Type 1 errors). Those species now make up the majority of actions in Bin 5. Despite this, placing a species in Bin 5 does not put off working on the listing action, it simply prioritizes species in Bins 1, 2, 3, and 4 for completion first. We intend to make findings on species in Bin 5 as our resources allow. Once we have processed the species currently appropriate for placement in Bin 5, we anticipate that the use of this bin will be infrequent in the future as we strive for greater consistency in our application of the 90-day standard.

Comment (17): A commenter stated specific criteria should be developed to differentiate between strong versus limited data. Another commenter suggested rephrasing “we know almost nothing about its threats or status.”

Our Response: It has been our experience that data regarding a species’ status are a relative measure and, thus, vary based on the circumstances for a particular species, so we have not further defined these terms. Furthermore, providing precise definitions may unintentionally limit our ability to bin actions appropriately.

Regarding the request to rephrase “we know almost nothing about its threats or status,” we have rephrased the description of Bin 5 in this final methodology to “limited information is available regarding its threats or status.”

#### *Comments Regarding Additional Considerations*

Comment (18): Many commenters questioned how the additional considerations would be applied to move species between bins.

Our Response: We have split the section of the draft methodology titled **Additional Considerations** into two sections for the final methodology. In the draft methodology, the first two bullets under **Additional Considerations** related to how we would consider prioritizing species within bins. In the final methodology, above, this information is now titled **Sub-Ranking Considerations**. We have clarified the language in this final methodology to reduce confusion and highlight that the three sub-ranking considerations will not be used to move species between bins, but rather will be used as tie-breakers to sub-rank species within a particular bin.

The third and fourth bullets under **Additional Considerations** in the draft methodology



do not relate to ranking within bins, but rather are important considerations regarding exceptions to the priority order in scheduling actions in the National Listing Workplan. In the final methodology, above, this information is now titled **Exceptions to Priority Order**.

Comment (19): Several commenters suggested the examples used in the second bullet under the draft methodology's **Additional Considerations** section were biased against grazing and in suggesting that the Act cannot ameliorate threats related to climate change. Another commenter suggested that using the purported ability, or lack thereof, of the Act to improve a species' condition was a cynical and self-fulfilling prophecy.

Our Response: In our 40 years' experience implementing the Act, we have learned that the protections provided for under the Act better address some types of threats than others. For example, species that have been threatened by excessive human-caused mortality (e.g., bald eagle, peregrine falcon, gray wolf, and grizzly bear) have seen relatively quick increases once the sources of mortality were managed. The Act's provisions are less effective against other threats, such as sea-level rise or catastrophic events (e.g., tsunamis, drought). The sub-ranking considerations will be used to rank species within their particular bins. The consideration of whether the Act can improve conditions for a species' status is a useful tool to assist in the prioritization of listing species that need help first, and where, within a bin, our resources would be best spent first.

Comment (20): Several commenters disagreed with our inclusion of the "level of complexity" and "level of controversy" as additional sub-ranking considerations, stating that the inclusion of such criteria is contrary to the obligation of the Service to make decisions based on

the best available scientific and commercial data. Commenters were concerned that complexity and controversy could be used to delay decisions on “politically sensitive” species.

Our Response: We will always use the best scientific and commercial data available when evaluating species for listing under the Act. However, we underscore that this prioritization methodology is not to be used to make decisions about whether species should be listed under the Act. Rather, this methodology is a system to manage our outstanding workload. The consideration of level of complexity and level of controversy are important points for managing our workload, in that they can inform the breadth and depth of a particular action. Knowing ahead of time the expected complexity and controversy of an action will inform our allocation of resources to address that particular action.

#### *Other Comments*

Comment (21): One commenter suggested using State wildlife action plans as the principle source of information for binning species.

Our Response: We will use appropriate information sources to assign species to bins, including information from State wildlife action plans (SWAPs). We acknowledge that the information in SWAPs is a tremendous resource. However, not all information needed to accurately bin species would necessarily be contained in SWAPs. We intend to use information from our files and other available resources to bin actions appropriately.

Comment (22): A commenter stated that questions regarding “what is a species?” must be resolved before listing and that actions for species that have questionable taxonomy or questions regarding “listability” under the Act should be placed in lower priority bins.

Our Response: As stated in the draft and this final methodology, we will place species in Bin 3 if there is some uncertainty about taxonomy that can be addressed with new science that is underway. Species without such uncertainties and without emerging science underway to address uncertainties may be placed in any other bin deemed appropriate depending on the particular facts of the situation.

Comment (23): Some commenters expressed support of our intentions to work with States, Tribes, and other appropriate conservation partners, while other commenters encouraged broadening the scope to include other parties such as industry and local governments.

Our Response: We think it most appropriate to include the mention of conservation partners with management authority for species because it has been our experience that those entities have the most specific and pertinent information for the binning methodology. However, we accept and welcome information from interested parties at any time. We will consider information received from all parties while assessing the most appropriate bin for a species.

Comment (24): One commenter stated that this methodology cannot become an excuse for not making a determination based on inadequate data.

Our Response: This methodology is a prioritization process and is not a substitute for our independent obligations under the Act for determining whether species meet the definitions of “endangered species” or “threatened species.” It is not the Service’s intent to use the methodology as an excuse for not making determinations based on inadequate data. Rather, we will continue to follow the requirements of the Act, including making determinations based on the best available scientific and commercial data at the time we make the decision.

Comment (25): A commenter stated that the Service should be careful in using the strength-of-data criterion so that it does not become the basis for fast-tracking listing while delaying not-warranted determinations.

Our Response: This binning methodology is intended to provide clarity for the public and stakeholders, as well as Service staff, about how we will prioritize our workload. As described in Bin 2, strength of data applies to situations where listing is likely warranted and where listing is likely not warranted. In both situations, strong data may lead to such species being prioritized ahead of those whose situations are less certain (Bins 3, 4, and 5). Therefore, we do not view the strength of data to be a fast track for listings at the expense of not-warranted determinations.

Comment (26): Several commenters noted that this methodology appeared to endorse a departure from statutory timeframes, and those commenters do not agree with this departure.

Our Response: Our intent for this methodology is to provide a means by which we are able to process our substantial outstanding workload with a transparent prioritization system. Our ability to comply with statutory timeframes depends directly on the funding allocated by Congress to do so. This amount has been capped at \$1.5 million for the last several years. This final prioritization methodology does not modify our statutory obligations under the Act. While it is true that the Service has been unable to address the hundreds of overdue 12-month findings, resource limitations leave us with no conceivable scenario where the Service would be able to address them in their respective statutory timeframes.

Comment (27): A commenter suggested the focus of the methodology should be a reliance on existing information to rank species rather than collecting new information.

Our Response: Collection of new information is not needed in order to rank actions using this methodology; actions will be assigned to bins using the information available to the Service in our files, the 90-day finding, any petitions, and that we have received from our partners. The need for additional information to clarify issues related to taxonomy (Bin 3) or waiting for additional information regarding implementation of conservation efforts (Bin 4) is part of this methodology. However, we do not view these two instances as collection of new information that will inform placement in bins.

Comment (28): One commenter recommended adding a Bin 6 for those species where strong evidence indicates listing is not warranted.

Our Response: We believe that the commenter's concern is addressed by Bin 2, which includes those species for which we have strong information indicating that listing is likely not warranted.

### **Determinations Under Other Authorities**

As mentioned above, we intend to use this methodology to prioritize work on status reviews and accompanying 12-month findings and to assist with prioritizing actions. Below we make determinations provided for under several Executive Orders and statutes that may apply where a Federal action is not a binding rule or regulation.

### **National Environmental Policy Act (NEPA)**

We have analyzed this final methodology in accordance with the criteria of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), the Department of the Interior regulations on Implementation of the National Environmental Policy Act (43 CFR 46.10–46.450), and the Department of the Interior Manual (516 DM 1–4 and 8).

We have determined that this methodology is categorically excluded from NEPA documentation requirements consistent with 40 CFR 1508.4 and 43 CFR 46.210(i). This categorical exclusion applies to policies, directives, regulations, and guidelines that are “of an administrative, financial, legal, technical, or procedural nature.” This action does not trigger an extraordinary circumstance, as outlined at 43 CFR 46.215, applicable to the categorical exclusion. Therefore, this methodology does not constitute a major Federal action significantly affecting the quality of the human environment.

#### **Paperwork Reduction Act of 1995**

This final methodology does not contain any collections of information that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This final methodology will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### **Government-to-Government Relationship with Tribes**

In accordance with the President’s memorandum of April 29, 1994, “Government-to-Government Relations with Native American Tribal Governments” (59 FR 22951), Executive Order 13175 “Consultation and Coordination with Indian Tribal Governments,” the Department of the Interior Manual at 512 DM 2, and the Department of Commerce *American Indian and*

*Alaska Native Policy* (March 30, 1995), we have considered possible effects on federally recognized Indian tribes and have determined that there are no potential adverse effects of issuing this final methodology. Our intent with this final methodology is to provide transparency to Tribes and other stakeholders in the prioritization of our future workload. We will work with Tribes as we implement this final methodology and obtain the information necessary to bin specific actions accurately.

### **Authors**

The primary authors of this final methodology are the staff members of the Division of Conservation and Classification, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, Falls Church, VA 22041.

### **Authority**

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 19, 2016

Stephen Guertin

Acting Director, U.S. Fish and Wildlife Service.

**Billing Code 4333–15**

